

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**REPLY COMMENTS OF
THE STATE OF HAWAII**

The State of Hawaii (the “State”), by its attorneys and pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415, hereby replies to comments that were filed in the above captioned proceeding.¹ The State limits its response to the Commission’s request that the record be refreshed with respect to the definition of insular for purposes of Section 254(b)(3) of the Communications Act.²

Section 254(b)(3) mandates that consumers in all regions of the nation, including “insular” areas, should have access to telecommunications and information services.³ As the State explained in its response to the Commission’s 1999 *Unserved Areas NPRM*, insular should be defined to include all islands that are territories, possessions or States of the United States.⁴

¹ These Comments are submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

² See *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, Notice of Proposed Rulemaking, FCC 05-205, ¶ 38 (Dec. 9, 2005) (“*NPRM*”).

³ 47 U.S.C. § 254(b)(3).

⁴ See *Comments of the State of Hawaii*, CC Docket No. 96-45 (Dec. 16, 1999).

Such an approach is dictated by the rules of statutory construction and by the realities of providing telecommunications and information services to island-based populations.

The Supreme Court has explained that, where neither the text of a statute nor the provision's legislative history is clear, the dictionary is an appropriate reference point for deriving the meaning of an undefined term in the Communications Act.⁵ According to the dictionary cited in the Commission's *Unserved Areas NPRM*, "in common usage, the term insular area means 'of, or having the form of an island.'"⁶ The State of Hawaii clearly falls within this plain meaning.

Some commenters in this proceeding attempted to glean additional guidance regarding the definition of insular by canvassing the use of the term in other federal statutes. Such a review demonstrates only that technical terms, such as insular, must be defined based on the history and purposes of the federal statutes in which they are used. For example, at least one federal statute defines insular to include the State of Hawaii,⁷ while other federal statutes define insular to exclude Puerto Rico.⁸ Despite this inconsistent treatment, the Commission's *Unserved Areas NPRM* proposed to rely in part on unrelated federal statutes to support a conclusion that insular should be defined to include Puerto Rico and exclude Hawaii.

The history and purposes of the Communications Act provide no justification for treating possessions, territories and States any differently for purposes of Section 254(b)(3). To the contrary, the Act suggests that Congress intended the Commission to accord States and territories

⁵ See *MCI v. AT&T*, 512 U.S. 218, 225-29 (1994).

⁶ See Webster's New World Dictionary 731 (2d College ed. 1982).

⁷ See 16 U.S.C. § 1447(b) (Regional Marine Research Boards).

⁸ See, e.g., 16 U.S.C. § 2503(k) (Urban Park and Recreation Recovery) and 42 U.S.C. § 5204 (disaster survival and recovery).

the same treatment. Section 153(40) of the Act defines the term State to include all United States “territories and possessions.”⁹ In accordance with this definition, the Commission has previously found that several of Section 254’s universal service provisions apply equally to States and territories.¹⁰ There is nothing in either the text or legislative history of Section 254(b)(3) to suggest that Congress intended to alter this practice. The Commission, therefore, should not distinguish between territories and States in designating insular areas for purposes of Section 254 of the Act.

In an apparent effort to divert attention from the requirements of statutory construction, Puerto Rico Telephone Company claims in its comments that the possible exclusion of Hawaii from the definition of insular “is not significant” because Hawaii has never been a high cost region.¹¹ In reality, the State of Hawaii shares the same geographic and topographic issues that make Puerto Rico a high cost area. Many of these unique conditions are more pronounced in Hawaii than in the Caribbean. The State of Hawaii is located about 2500 miles from the Mainland. The State’s citizens are spread across not one, but six major and several smaller islands. Moreover, like other insular areas, carriers operating in the State must contend with salt erosion, rough terrain, rocky subsoil, tropical storms, high transportation costs, diverse cultures and the need for inter-island distribution facilities.

⁹ 47 U.S.C. § 153(40).

¹⁰ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, FCC 99-269, CC Docket Nos. 97-21, 96-45 (Nov. 1, 1999); *Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, 11 FCC Rcd 9564, 9589 (1996).

¹¹ See *Comments of Puerto Rico Telephone Company, Inc.*, CC Docket No. 96-45, WC Docket No. 05-337, at 15 n.17 (March 27, 2006).

To further illustrate the difficult conditions in Hawaii, the State provided the Commission with technical detail regarding its population distribution and telephony penetration rates in its 1999 comments in this docket. This data was recently reinforced by the comments of Hawaiian Telecom, Inc. in this proceeding.¹² Based on this information, no justification exists to treat Hawaii any differently than other island-based regions of the United States. Instead, the Commission should abide by the dictates of the Communications Act and the rules of statutory construction and adopt a definition of insular for purposes of Section 254(b)(3) that appropriately includes the State of Hawaii and its citizens.

Respectfully submitted,

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¹² See *Comments of Hawaiian Telecom, Inc.*, CC Docket No. 96-45, WC Docket No. 05-337 (March 27, 2006).